

Consent Agreement and Order

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WHEREAS, the Environmental Protection Agency (hereinafter "EPA") filed the Complaint with this Consent Agreement and Order (hereinafter "CAO") in this action on September 30, 1994, against the Massachusetts Highway Department (hereinafter "MHD"), a State Agency within the Commonwealth of Massachusetts, pursuant to Section 3008(a) of the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6908 et seq. (also referred to as the Resource Conservation and Recovery Act, hereinafter "RCRA");

WHEREAS, by its respective undersigned representatives, and having recognized that settlement of this matter is in the public interest, EPA and MHD have agreed to entry into this CAO; and

WHEREAS, there has been no trial, adjudication, or admission by MHD of any issue of fact or law relating to this action, and the parties are entering into this CAO solely for the purposes of settlement.

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED AS FOLLOWS:

I. JURISDICTION

1. EPA has jurisdiction over the subject matter of this action pursuant by RCRA Section 3008 (a), 42 U.S.C. §§ 6928(a). MHD waives defenses to jurisdiction for the limited purpose of entering into this CAO.

II. DEFINITIONS

2. All terms used in this CAO are as defined in RCRA and 40 C.F.R. §§ 260.10 and 264.141, unless otherwise defined below:

A. "Area of Concern" or "AOC" means an area at which solid or hazardous waste or hazardous constituents may have been managed or may have come to be located at MHD Facilities and from which releases of hazardous waste or hazardous constituents have or may have occurred or may occur in the future. Examples include, without limitation: landfills, surface impoundments,

waste piles, storage tanks, incinerators, injection wells, tanks (including 90-day accumulation tanks), container storage areas, transfer stations, wastewater treatment units, and waste recycling operations.

B. "Clean State Initiative" or Executive Order 350 shall mean the Executive Order issued by Governor William F. Weld on March 19, 1994, which requires state agencies in the Commonwealth of Massachusetts to identify, report and correct all environmental problems in a comprehensive manner.

C. "Day" means a calendar day, unless otherwise stated.

D. "Director" means the Director of the Waste Management Division, EPA Region I, or his designee.

E. "Facilities" or "Sites" means the approximately 139 facilities, more specifically described in Attachment A, owned and operated by the Massachusetts Highway Department and Commonwealth of Massachusetts including structures other appurtenances and improvements on the land. For purposes of calculating and assessing a penalty, the terms "facility" and "penalty" shall include the Bridgewater, South Boston and Wellesley, Massachusetts sites.

F. "Hazardous Constituents" means those constituents listed in Appendix VIII to 40 C.F.R. Part 261.

G. "Interim Measures" means the measures MHD must implement to stabilize releases of hazardous wastes or hazardous constituents which pose a threat or may pose a threat to human health or the environment.

H. "Massachusetts General Law Chapter 21 E" shall mean MGL c. 21 E and Section 310 CMR 40.000 ("MCP").

I. "Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Work required by this CAO.

J. "RCRA" means the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.

K. "Release" includes any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, as defined in RCRA.

L. "Scope of Work" or "SOW" shall mean the outline of work MHD must use to develop all workplans and reports required

by this CAO as set forth in this CAO and its Attachments. All SOW Attachments and modifications or amendments thereto, are incorporated into this CAO and are an enforceable part of this CAO. Appendices are for demonstrative purposes.

M. "Stabilization" means a management strategy to control or abate threats to human health or the environment from releases of hazardous wastes or hazardous constituents at RCRA facilities, or prevent or minimize the further spread of contamination while long term remedies are pursued.

N. "Supplemental Environmental Project" or "SEPs" means the terms and conditions expressed in the February 12, 1991 Policy on the Use of Supplemental Environmental Projects in Agency Enforcement Settlements.

O. The "Treasury Bill Rate" shall mean the quoted thirteen (13) week Treasury Bill rate per annum which is quoted in the Wall Street Journal (or similar publication) on the first business day of the interest period.

P. "Work" shall mean all activities MHD is required to perform under this CAO, including, but not limited to compliance with RCRA, MGL 21C and 21E, completion of the SEPs, implementation of Interim Measures, Operation and Maintenance, and responding to any additional response actions. However, "Work" shall not include those activities required by Section XV (Retention and Availability of Information).

Q. "Work Plan" means plans and other documents required by this CAO which require the completion of Work and other activities to achieve the objectives of this CAO ie. SEP Work Plan.

III. OBJECTIVES

3. This CAO is intended to require MHD to perform the following: achieve a state of compliance with the notification and reporting requirements that formed the basis of the Complaint; implement EPA approved SEPs as generally set out in Section XI of this CAO; pay a civil penalty in the amount of \$100,000; ensure that MHD has corrected any operating procedures or conditions at its Facilities that violate or may violate RCRA and applicable regulations; and correct procedures and or

conditions at its Facilities that may pose a threat to human health or the environment.

4. Pursuant to MGL 21C and 21E and the Massachusetts Clean State Initiative, the Massachusetts Department of Environmental Protection (hereinafter "MA DEP") shall direct and monitor an agency-wide audit of all MHD Facilities that generate, store, dispose of or transport waste; thoroughly evaluate the nature and extent of any releases and threatened releases of hazardous waste or hazardous constituents at or from the Facilities; implement Stabilization/Interim Measures to control or abate imminent threats to human health or the environment from releases and threatened releases of hazardous waste or hazardous constituents at or from the Facilities, prevent or minimize the further spread of contamination while long-term corrective action remedies at the Facilities are pursued; and implement waste minimization strategies.

5. Facilitate implementation of the Clean State Executive Order in part by comprehensively auditing all MHD Facilities. Clean State calls for state agencies to identify, report and correct all environmental problems in a comprehensive manner by identifying, investigating and facilitating the resolution of existing compliance matters. In addition, the Clean State Initiative addresses future environmental problems including investigating, planning and proposing the implementation of preventative environmental measures for each of the executive offices and their agencies.

IV. STIPULATIONS

Solely for the purposes of this CAO, the parties stipulate as follows:

6. Massachusetts Highway Department ("MHD") is an agency of the Commonwealth of Massachusetts. Established pursuant to Massachusetts General Laws Chapter 16 and charged with the responsibility to develop and maintain a safe and efficient state highway system, it constructs and maintains approximately 3,785 linear miles of roadway, 2,862 bridges, 30,792 catch basins, over 60,000 acres of roadway right-of-way, 2,000 miles of drainage ditches and other traffic and transportation safety equipment. To aid in the satisfaction of statutory mandate, it owns or operates approximately 139 Facilities and maintenance depots across the Commonwealth.

7. MHD has generated hazardous waste and hazardous constituents at its Bridgewater, South Boston and Wellesley Facilities, as well as at other MHD Facilities within the meaning of Section 1004(5) of RCRA, 42 U.S.C. § 6904(5).

8. On February 25, 1981, pursuant to Section 3006(b)(1) of RCRA, 42 U.S.C. § 6926(b)(1), and 40 C.F.R. Part 123 (now Part 271, Subpart B), EPA granted to the Commonwealth of Massachusetts Phase I Interim Authorization, to administer aspects of a hazardous waste program in lieu of certain parts of the Federal program in the Commonwealth of Massachusetts, subject to various limitations. On June 15, 1984, EPA granted Phase II authorization to the Commonwealth. Pursuant to Section 3006(b)

of RCRA, 42 U.S.C. § 6926(b), the Commonwealth was granted final authorization on February 7, 1985. As a result, facilities in Massachusetts which qualify or did qualify for interim status under Section 3005(e)(1) of RCRA, 42 U.S.C. § 6925(e)(1), are now regulated under the authorized Massachusetts provisions found at 310 C.M.R. 30.00 et seq. of the Regulations of the Massachusetts Department of Environmental Quality Engineering (now known as the Department of Environmental Protection.) The federally-approved State program is enforceable, in lieu of the Federal regulations, by the State or by the United States pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

9. On or about April 1, 1993, an anonymous caller informed EPA that there was a large cluster of drums that appeared to contain hazardous waste located at its maintenance Facility located at Route 104 and Route 24 in Bridgewater, Massachusetts, property owned by Massachusetts Highway Department.

10. Based upon the caller's information, duly authorized EPA inspectors inspected MHD's Bridgewater Facility and determined that MHD: failed to ensure that all personnel who manage or handle hazardous waste receive initial training; failed to conduct an annual review of the initial training for all personnel who manage or handle hazardous waste; stored hazardous waste for greater than ninety (90) days; failed to conduct weekly inspections of hazardous waste containers; failed to maintain a Contingency Plan; failed to submit biennial reports by March 1 of each even numbered year; failed to transfer hazardous waste from

leaking containers to ones that are in good condition; failed to make a proper hazardous waste determination upon the generation of solid wastes; and, failed to clearly mark and label containers of hazardous waste throughout the period of accumulation.

11. On or about March 30, 1994, duly authorized EPA inspectors inspected the Massachusetts Highway Department's South Boston Facility located at 400 D Street, Boston Massachusetts. As a result of that inspection, it was determined that MHD: failed to ensure that all personnel who manage or handle hazardous waste receive initial training; failed to conduct an annual review of the initial training for all personnel who manage or handle hazardous waste; stored hazardous waste for greater than ninety (90) days; failed to conduct weekly inspections of hazardous waste containers; failed to submit biennial reports by March 1 of each even numbered year; failed to maintain a Contingency Plan; and, failed to clearly mark and label containers of hazardous waste throughout the period of accumulation.

12. On or about March 30, 1994, duly authorized EPA inspectors inspected MHD's Wellesley Facility located at 93 Worcester Street, Wellesley, Massachusetts. During the course of the inspection, EPA determined that MHD: failed to have adequate aisle space; failed to submit biennial reports by March 1 of each even numbered year; failed to maintain a Contingency Plan; failed to conduct weekly inspections of hazardous waste containers; stored hazardous waste for greater than ninety (90) days; and

failed to conduct an annual review of the initial training for all personnel who manage or handle hazardous waste.

13. MHD is currently performing an environmental audit at 29 of its 139 Facilities. Based on the findings, MHD shall initiate removal actions and modify management procedures, where necessary. MHD removed the drums located at the Wellesley, South Boston and Bridgewater Facilities.

V. PARTIES BOUND

14. This CAO shall apply to and be binding on MHD, its successors and assigns.

15. No change in ownership status relating to any or all of the Facilities shall in any way alter MHD's responsibilities under this CAO.

16. Within ten (10) days of entry of this CAO, MHD shall provide a copy of this CAO to all contractors, subcontractors, laboratories, and consultants retained to conduct any portion of the Work to be performed. For any such persons or entities retained thereafter, MHD shall provide a copy of this CAO upon the date of such retention.

17. MHD shall give notice of the terms of this CAO to any successor in interest prior to transfer of ownership or operation of any portion of a Facility or Facilities. MHD shall notify EPA, in writing, within sixty (60) business days of negotiating such transfer and shall properly record such transfer. This paragraph does not relieve MHD of its obligation to comply with any applicable notice requirements of 40 C.F.R. § 270.72.

18. The undersigned representatives of MHD certify that they are fully authorized to enter into the terms and conditions of this CAO and to execute and legally bind MHD to this CAO.

VI. COMPLIANCE REQUIREMENTS - COMPLIANCE WITH RCRA REGULATORY REQUIREMENTS

19. MHD shall operate its Facilities in compliance with RCRA, MGL 21C and 21E, the Massachusetts Clean State Initiative and applicable regulations. Only the Bridgewater, South Boston, and Wellesley Facilities must satisfy the requirements set out in this Section.

20. The review and approval process for any submittal required by this Section shall be the same as set forth in Section XII (EPA Review and Approval Process). Upon approval, all submittals shall be deemed incorporated into this CAO and enforceable hereunder.

MHD shall comply with the following requirements:

A. Personnel Who Manage or Handle Hazardous Waste Must Receive Training

(1) MHD shall demonstrate compliance with the training requirements found at 310 CMR 30.516(1), which incorporate the requirements of 310 CMR 30.340(1)(d)1.

(2) MHD personnel involved in hazardous waste management activities must successfully complete a training program that ensures compliance with 310 CMR 30.000 within six (6) months of their employment or assignment to a facility, or their being assigned to a position new to them at the facility. Within three (3) months of entering this CAO, MHD shall submit to

EPA, for review and approval, certifications attesting that, at a minimum, such a training course exists, and that fifty (50) percent of persons involved in hazardous waste management activities have successfully completed a waste management training course. This requirement shall continue on a monthly basis, beginning three (3) months after entering this CAO until all personnel involved in waste management have received training and proper documentation has been submitted to EPA, within six (6) months of entering this CAO. Proper training documentation shall include a course outline, the names of persons required to take the course, a sign in sheet, and an instructor vitae.

(3) If EPA determines that the documentation submitted by MHD does not comply with the training requirements, cited above, MHD shall train all personnel in accordance with EPA's comments and shall submit the required documentation for the additional training within two (2) months of receiving EPA's comments.

(4) Following the initial training of personnel that manage hazardous wastes, MHD shall conduct an annual review of the initial training required by 310 CMR 30.516(1)(d), which incorporates the requirements of 310 CMR 30.340(1)(d)1.

(5) Until final certification of compliance, MHD shall submit to EPA, for review and approval, written documentation stating the date of the annual review, the identity of persons that participated, and the identity of those persons that did not participate. MHD shall also state the reasons why

those persons did not participate and a schedule for the next annual training review. The annual training information will be submitted twice annually and at least six (6) months apart, so as to accommodate the significant numbers of persons requiring training.

B. Maintain a Contingency Plan

(1) MHD shall demonstrate compliance with those regulations which require it to maintain a contingency plan designed to prevent and minimize hazards to public health, safety or welfare of the environment from fires, explosions, spills or other unplanned sudden or nonsudden releases of hazardous waste or hazardous waste constituents to air, soil, surface water, or ground water. In addition, the contingency plan shall have a clear outline of the lines of communication between facility personnel and describe the actions facility personnel shall take in response to potential or actual fires, explosions, or any other sudden or non-sudden releases of hazardous waste or hazardous waste constituents to the environment pursuant to 310 CMR 30.520, which incorporates the requirements of 310 CMR 30.340(1)(d).

(2) Within three (3) months of entering into this CAO, MHD shall submit to EPA in writing, for review and approval, a hazardous waste contingency plan that describes the manner in which it will prevent and minimize hazards to public health, safety or welfare of the environment, a clear outline of the lines of communication among facility personnel and describe the

actions facility personnel shall take in response to potential or actual fires, explosions, or any other sudden or non-sudden releases of hazardous waste or hazardous waste constituents.

(3) If EPA determines that the documentation submitted does not satisfy the hazardous contingency planning requirements, MHD shall correct its procedures in accordance with EPA's comments and shall submit the required documentation within thirty (30) days of receiving EPA's comments.

C. Container Management

(1) MHD shall demonstrate compliance with the regulations which govern the use and management of containers of hazardous waste, as set out at 310 CMR 30.680, for a three (3) month period.

(2) Within two (2) months of entering into this CAO, MHD shall submit to EPA, for review and approval, a hazardous waste container management plan that will describe the manner in which containers of hazardous waste are managed, including but not limited to: labelling and marking; accumulation; condition of containers; compatibility of waste with containers; opening and closing for testing, addition, or removal of wastes; aisle space specifications; inspections; in-house tracking and inventory systems; and, special handling procedures for ignitable and reactive wastes. Upon approval of the container management plan by EPA, MHD shall promptly implement such plan. Within thirty (30) days after the approved container management plan has been implemented, MHD shall provide

a written statement to EPA certifying that such plan has been implemented. MHD shall submit written certification for three (3) months that the approved container management plan is being implemented for each Facility.

(3) If EPA determines that the documentation submitted does not satisfy the hazardous waste management requirements, MHD shall correct its procedures in accordance with EPA's comments and shall submit the required documentation within thirty (30) days of receiving EPA's comments.

(4) Within thirty (30) days of entry of this CAO, MHD's Chief Engineer shall submit a certification stating that MHD is acting as a small quantity generator of hazardous waste.

D. Storage of Hazardous Waste

(1) MHD shall demonstrate compliance with the regulations which require it to accumulate hazardous waste on-site for a period of not more than one hundred eighty (180) days at those portions of the Facilities which do not have interim status or a storage license from MA DEP, pursuant to 310 CMR 30.350.

(2) Within thirty (30) days of entry of this CAO, MHD shall submit to EPA, for review and approval, manifests and all attachments for each waste generated at the Facilities, reflecting the disposal of such wastes during each previous month. This document submittal requirement shall be continued on a monthly basis for two (2) months.

(3) If EPA determines that the documentation

submitted does not satisfy the regulatory storage requirements, MHD shall correct its procedures in accordance with EPA's comments and shall submit the required documentation for an additional two (2) months.

(4) If a small quantity generator accumulates waste beyond one hundred eighty (180) days without a license, the generator becomes a storage facility and shall comply with the requirements in 310 CMR 30.500, 30.600, 30.700, 30.800, and 30.900 applicable to storage of hazardous waste.

(5) If MHD intends to or does generate in any calendar month 1,000 kilograms or more of non-acutely hazardous waste or accumulates 2,000 kilograms or more at any one time of non-acutely hazardous waste, it becomes a large quantity generator and shall comply with all requirements in 310 CMR 30.000 applicable to large quantity generators.

E. Leaking Containers of Hazardous Waste

(1) MHD shall demonstrate compliance with the regulations which require a generator to transfer hazardous waste stored in a container observed to be leaking to a container that is in good condition pursuant to 310 CMR 30.683, which incorporates the requirements of 310 CMR 30.340(1)(a)1.a.

(2) Within sixty (60) days of entry of the CAO, MHD shall submit to EPA, for review and approval, a plan for the proper storage of hazardous waste in containers that are in good condition.

(3) MHD shall conduct weekly inspections and

provide weekly inspection reports from its Facilities that have leaking containers. Also, it shall maintain logs of such inspections as part of its inspection plan. Copies of such logs shall be submitted to EPA with a copy of the plan included pursuant to this Section.

(4) If EPA determines that containers continue to leak, MHD shall submit the required documentation for an additional two (2) months.

F. Hazardous Waste Determinations

(1) MHD shall demonstrate compliance with the regulations which require a generator to test its solid waste, or use knowledge of the waste, to determine if the waste is a hazardous waste or not pursuant to 310 CMR 30.302.

(2) Within sixty (60) days of entry of this CAO, MHD shall submit to EPA, for review and approval, a plan for testing its solid waste or demonstrate through personal knowledge that the waste is not hazardous. This document submittal requirement shall be continued on a monthly basis for three (3) months.

(3) If EPA determines that MHD has failed to adequately satisfy the waste determination requirements, by in part, evaluating whether a waste is hazardous, MHD shall submit the required documentation for an additional sixty (60) days.

G. Manifests

(1) MHD shall demonstrate compliance with the manifest requirements found at 310 CMR 30.310 for a three (3)

month period.

(2) Within thirty (30) days of entry of this CAO, MHD shall submit to EPA, manifests and all attachments for each waste generated at the Facilities. This document submittal requirement shall be continued on a monthly basis for sixty (60) days.

(3) If EPA determines that the documentation submitted by MHD does not comply with the manifest requirements above, MHD shall correct its procedures for completion of manifests in accordance with EPA's comments and shall submit the required documentation for an additional ninety (90) days.

H. Clearly Mark and Label Containers of Hazardous Waste Throughout the Period of Accumulation

(1) MHD shall demonstrate compliance with the regulations that require a generator to label containers containing hazardous waste with the words "Hazardous Waste"; the hazardous waste identified in words; the type of hazard associated with the waste identified in words; and the date upon which each period of accumulation began, in such a way that the marks and labels are clearly visible for inspection, pursuant to 310 CMR 30.682, as incorporated by 310 CMR 30.351(4).

(2) Within sixty (60) days of entry of this CAO, MHD shall submit to EPA, for review and approval, procedures for marking and labeling containers of hazardous waste appropriately.

(3) If EPA determines that the documentation submitted by MHD fails to demonstrate that MHD is marking containers with the words "Hazardous Waste"; the hazardous waste

identified in words; the type of hazard associated with the waste identified in words; and the date upon which each period of accumulation began, in such a way that the marks and labels are clearly visible for inspection, MHD shall correct its procedures for marking and labeling containers in accordance with EPA's comments and shall submit the required documentation for an additional three (3) month period.

I. Land Disposal Restriction Notifications

(1) MHD shall demonstrate compliance with the regulations which require that it determine whether each of the hazardous wastes it generates is restricted from land disposal and whether such wastes meet the applicable treatment standards set forth at 40 C.F.R. Part 268, Subpart D, or exceed the applicable prohibition levels set forth at 40 C.F.R. § 268.32, or 40 C.F.R. § 268.7(a)(1), and 40 C.F.R. § 268.7(a)(7).

(2) Within sixty (60) days of entry of this CAO, MHD shall submit to EPA a random sample of completed land disposal restriction notifications. EPA will have sole discretion to determine the number of manifests it will review during the pendency of this CAO.

(3) If EPA determines that the documentation submitted is not in compliance with the requirements cited above, MHD shall make corrections to its method of completing its land disposal restriction notifications in accordance with comments received from EPA and continue to submit LDR notices to EPA for one (1) month in the manner described above.

(4) Absent a showing of force majeure, all work in this Section shall be completed not later than six (6) months after entry of this CAO.

J. Submit Final Certification Report by March 31, 1995

(1) MHD shall demonstrate compliance with the regulations applicable to Small Quantity Generators, pursuant to 310 CMR 30.350, by March 31, 1995.

(2) If EPA determines that the documentation submitted does not satisfy the 310 CMR 300 requirements, MHD shall correct its procedures in accordance with EPA's comments and shall submit further documentation within thirty (30) days of receipt of such comments.

21. All compliance activities and verification associated with this Section shall be signed by MHD's Chief Engineer and shall include the following certification:

"I certify under penalty of law that MHD has complied with the applicable provisions of RCRA and MGL 21E and the documents were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

VII. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

22. In furtherance of the mutual objectives of EPA and MHD, MHD agrees to spend \$5 million on Supplemental Environmental Projects. MHD shall commence and implement Supplemental

Environmental Projects ("SEP"s) by December 31, 1998. In order for MHD to receive credit against the \$5 million commitment in performance of this Subsection, EPA must approve the projects pursuant to its SEP policy, a copy of which is attached hereto and part of this CAO.

23. MHD may propose two (2) sets of SEP project proposals. The first set of proposals shall be delivered to EPA no later than January 3, 1995. The second set of proposals shall be delivered to EPA no later than May 1, 1995. On each submission date, MHD shall submit a detailed proposal for SEPs which satisfies the criteria for such projects pursuant to EPA's SEP policy. The proposals shall consist of projects designed to: reduce the emissions and discharges of pollutants or toxic substances from MHD Facilities, promote and provide environmental education and training to private citizens and public entities within the Commonwealth, and restore urban ecosystems. The proposal for each SEP shall include: (a) a detailed technical description, including engineering plans and drawings, quality assurance and health and safety provisions, and provisions for any necessary operation and maintenance; (b) a statement of the specific objectives of its projects and how such objectives fulfill the requirements of EPA's SEP policy; (c) a detailed budget for both completion and operation of each major component; (d) identification of and a statement of qualifications for the supervising contractor or engineer selected by MHD; (e) a list of and schedule for obtaining any federal, State, and local permits

which may be required for completion an operation; (f) establishment of an eight (8) percent minority and women-owned business utilization goal for development, implementation and monitoring¹; and, (g) a schedule for completion of the proposed SEPs. To date, MHD has submitted draft project proposals that are outlined in Appendix II, Supplemental Environmental Projects.

24. In making its proposals to EPA under the preceding paragraph of this Subsection, MHD may submit one or more additional proposed SEPs as alternatives to the SEP(s) proposed. For each alternate, MHD shall provide the information specified in Paragraph 23.

25. EPA shall review the SEP proposal(s) and inform MHD, in writing, of its approval, conditional approval (subject to modification by MHD of the proposal in accordance with EPA's comments), or disapproval of each SEP in the proposal. If EPA disapproves any SEP proposed or conditionally approves a SEP subject to modification, MHD shall have not more than sixty (60) days from its receipt of EPA's written disapproval or conditional approval, to either modify the SEP in accordance with EPA's comments and resubmit it for EPA approval, or to propose one alternate.

26. The decision to approve, disapprove, or to conditionally approve any SEP proposal shall be final unless MHD

¹MHD shall use its best efforts as that term is defined by the U.S. Department of Transportation Disadvantaged Business Enterprise regulations to identify and secure the services of disadvantaged business persons in order to satisfy the terms of the Consent Agreement and Order.

invokes Dispute Resolution.

27. Within thirty (30) days after receiving written notice of EPA's approval, MHD shall commence and implement the approved SEPs in accordance with its schedule.

28. Each approved SEP shall be incorporated by reference and become enforceable under this CAO.

29. Beginning with the first quarter following January 1, 1995 or May 1, 1995, MHD shall include for each approved SEP: (a) a description of the actions taken to commence, complete and operate the SEP during the previous quarter, and of the actions planned for the next six (6) months; (b) an itemized summary of all expenditures that were incurred during the previous quarter; (c) information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the schedule for implementation, and efforts made to mitigate any actual or anticipated delays; and (d) any modifications to the approved SEP that MHD has proposed to EPA or that have been approved by EPA. Such information shall be included in each quarterly progress report which it submits to EPA and MA DEP pursuant to Section X (Quarterly and Semiannual Reporting).

30. Upon completion of each approved SEP, MHD shall submit to EPA written notification of completion and a final report summarizing any work remaining. Such written notification shall include a detailed accounting of the costs incurred to complete the SEP. The report shall be prepared and certified as true and accurate by a registered professional engineer and by MHD's SEP

Coordinator, and shall include appropriate supporting documentation. This provision applies separately to each SEP performed by MHD to fulfill its obligation under this CAO.

31. Upon receipt of the notice of SEP completion, EPA will review the final report and supporting documentation, and will conduct an on-site inspection, where appropriate. If satisfied that the SEP has been completed as approved or as modified, and that MHD has incurred the costs claimed by it, EPA will issue a Certification of SEP Completion. The Certification of SEP completion shall not preclude EPA from conducting a SEP audit or issuing a report. Following Certification, MHD shall perform all Operation and Maintenance activities required under the SEP, as approved or modified.

32. MHD may make a "timely" showing of impracticability that the terms of a SEP project cannot be satisfied through no fault of its own. "Timely showing" shall mean that MHD notifies EPA of the impracticability not later than ninety (90) days after EPA approves the SEP.

33. Modifications shall become effective on the 7th business day following the date on which EPA signs the SEP modification(s). In the event MHD requests more than one (1) modification within a six (6) month period, EPA will have sole discretion to approve or deny a modification. The SEP modifications shall be incorporated into this CAO.

34. If, in certifying SEP completion pursuant to Section XIX, (Certification), EPA determines that MHD expended less than

the dollar amount budgeted to commence and complete the SEPs, then MHD, with EPA's concurrence, may devote the difference between the actual cost and the budgeted cost to completion of another of the approved SEPs. In the event the difference is not so applied, MHD agrees to pay the difference, including accrued interest (if any), as an additional civil penalty pursuant to the provisions of Section XXII (Civil Penalty). Such additional civil penalty will be paid within one hundred eighty (180) days of receiving written notification from EPA that such difference, including accrued interest, is due and owing, pursuant to Section XXIII (Payment by MHD).

35. Interest shall accrue on the unspent balance of the \$5 million at such time that MHD fails to otherwise satisfy the terms of the SEPs. In the event MHD fails to spend the \$5 million on the approved SEPs, EPA may permit MHD to submit additional SEP proposals to use the unspent portion of the money. MHD shall submit the SEP proposals within three (3) months of determining that it will have a balance remaining. Interest shall accrue until such time that MHD submits the additional SEP proposals. Such interest shall accrue at the rate established by the Treasury Bill Rate in effect on the first business day that MHD is notified that it has failed to satisfy the terms of the SEPs. Any reference in this Section to the \$5 million MHD agrees to spend on SEPs shall include any interest accrued on such amount pursuant to the provisions of this paragraph. Any interest which accrues under this paragraph shall be used by MHD

in undertaking, operating or completing the approved SEPs.

36. Should MHD choose not to submit any SEP proposals according to the schedules described herein, it shall pay a penalty of \$3,889,660, pursuant to Section XXIII, (Payment by MHD).

37. In the event that: (a) EPA disapproves up to four (4) SEPs in a twelve (12) month period; (b) MHD fails to commence and complete the SEP(s) as approved by EPA; or (c) MHD chooses not to submit a SEP proposal in accordance with this subsection; MHD shall pay \$3,889,660 as an additional civil penalty pursuant to the provisions of Section XXII (Civil Penalty), less any amounts used for completion of any SEP(s) approved by EPA.

38. Should MHD choose not to submit a SEP proposal, it shall pay the additional civil penalty required under this Section within one hundred and eighty (180) days of the deadline to submit a SEP proposal pursuant to Section XXIII, (Payment by MHD).

39. Should MHD receive notice of EPA's disapproval of MHD's final SEP proposal, it shall pay the additional civil penalty within one hundred and eighty (180) days of receiving such notice.

40. Nothing in this CAO shall be construed to limit or otherwise affect the right of EPA to conduct and resolve any audit or render any report authorized pursuant to the Inspector General's Act of 1978.

VIII. REMEDIATION WORK TO BE PERFORMED

41. MHD shall perform the acts specified in the MA DEP Consent Order, attached hereto as Appendix I, and this CAO by the dates and under the conditions so described in each agreement. All Work undertaken pursuant to the MA Clean State Initiative, MA DEP Consent Order shall be performed in a manner consistent with, at a minimum: the MA Clean State Initiative, the attached MA DEP Consent Order and, 3008(h) of RCRA and applicable guidance.

42. MHD agrees to spend \$20,000,000 or such sums as may be necessary to perform site investigations, Interim Measures, or other forms of remediation at its Facilities not later than December 31, 2000. However, investigations and remediation may extend beyond December 31, 2000 based on the nature and extent of contamination found at the Facilities.

43. MHD shall perform the Work at each Facility as described in the MA DEP Consent Order and any modifications thereto, in consultation with EPA, where one of the Parties determines that a release or threat of a release may pose an imminent and substantial endangerment to human health or the environment.

44. EPA retains its ability to consult on the following deliverables prior to MA DEP approval: Tier Classification Submittal, the Comprehensive Response Action, the Phase II Comprehensive Site Assessment Scope of Work and the Draft Final Response Action Outcome Statement.

45. Nothing in the MA Clean State Initiative and MA DEP

Consent Order constitutes a warranty or representation by EPA that compliance with the terms of the MA DEP Consent Order and other attendant agreements constitutes compliance with RCRA or the terms of this CAO. MHD's compliance with the Work requirements shall not foreclose EPA from seeking compliance with all terms and conditions of this CAO.

46. MHD shall provide to EPA copies of the Tier Classification Submittal, the Comprehensive Response Action, the Phase II Comprehensive Site Assessment Scope of Work and Final Draft Response Action Outcome Statement. EPA may comment on the Tier Classification Submittal, the Comprehensive Response Action, the Phase II Comprehensive Site Assessment Scope of Work and Final Draft Response Action Outcome Statement prior to final approval.

47. EPA, upon receipt of the deliverables, will have, at a minimum, thirty (30) days to review the documents and provide comments to MHD and MA DEP.

48. The remediation shall be performed in a manner consistent with the MA DEP Consent Order and MGL c. 21E. If the Facilities are MA Clean State High Priorities, remediation shall be completed on or before December 31, 1998. Lower priorities shall be remediated by December 31, 2000. However, investigations and remediation may extend beyond these dates based on the nature and extent of contamination at the Facilities.

IX. ENVIRONMENTAL AUDIT

49. MHD shall perform an audit of its Facilities pursuant to the MA DEP Consent Order. The audit shall include, but not be limited to: an environmental compliance audit; an environmental management systems audit (the "management component") which evaluates the ability of MHD's existing environmental management systems to identify, respond to and resolve compliance problems and maintain compliance with the requirements of environmental laws at the Facilities; a waste minimization plan; and a follow-up audit.

50. The audit shall be developed and performed by an independent third party environmental auditor ("Audit Firm").

51. MA DEP shall oversee the implementation of the audit, consistent with the MA DEP Consent Order and appended Audit Agreement. EPA will consult with MA DEP on the audit Work Plan, which shall describe in detail the tasks to be undertaken to conduct the audit.

52. MHD shall provide copies of final audit reports, prior to final approval. EPA will have an opportunity to review and comment on each final audit report, prior to final approval.

53. Violations of environmental laws set forth in the final audit reports will not constitute a violation(s) of this CAO.

X. QUARTERLY AND SEMIANNUAL REPORTING

54. MHD shall provide one copy of written, quarterly status reports to EPA for one year. For subsequent years, MHD shall submit semiannual status reports to the EPA. Such reports shall

include information pertaining to the development and implementation of SEPs, Compliance (as defined in Section VI), status reports, and other reports that may be required. In addition, should the threat of a release occur that may present an imminent and substantial threat to human health or the environment, MHD shall provide a report as described in this paragraph. In such quarterly or semiannual report, MHD shall detail the results of all monitoring and sampling required to reduce and eliminate the threat.

55. MHD shall submit the first quarterly report within thirty (30) days after the first full calendar quarter following entry of this CAO, unless otherwise specified. Subsequent reports shall be submitted by MHD no later than thirty (30) days after the close of the preceding calendar quarter (ie., April 30, July 31, October 31 and January 31) for one year. After the first year, reports shall be submitted to EPA on a semiannual basis on no later than thirty (30) days after the close of the preceding half year (ie. January and June). All reports shall include, but are not limited to the following:

A. a description of the actions taken to achieve compliance with the terms of this CAO;

B. a description of all tasks and actions conducted pursuant to this CAO completed during the past quarterly period, and all such actions and tasks that are scheduled for the next quarterly period; and

C. identification of any elements not completed as required and any problems or anticipated problems, including the scheduled completion date, the new anticipated completion date, the reason(s) for the delay and the actions taken to minimize the delay.

56. In its progress reports, MHD shall describe the status of the SEP projects, Compliance (as defined in Section VI) and the field activities (i.e. well drilling, installation of equipment, or sampling) associated with remediating a threat that may pose an imminent and substantial endangerment to human health or the environment. The progress reports shall also state the scheduled date(s) for initiating and completing those activities. MHD shall notify EPA's Waste Management Division and MA DEP at least fourteen (14) days prior to engaging in any field activities that are not set out in the progress reports or of any change in the schedule for such activities. EPA may waive the fourteen (14) day notice requirement, upon a showing by MHD that it may create or exacerbate a threat to human health or the environment. However, in no event shall MHD notify EPA's Waste Management Division and MA DEP later than twenty four (24) hours after discovering or obtaining information that a potential threat to human health or the environment may exist. This Paragraph does not obviate the requirements set out in Paragraph 59, below.

57. Such quarterly and semiannual reports shall be signed by MHD's Chief Engineer, and contain the following certification:

"I certify under penalty of law that this document and any attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my directions and my inquiry of the person(s) directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete."

MHD shall not object to the admission of any quarterly or semiannual report as evidence in any proceeding to enforce this CAO. These reports are required in addition to any other reporting requirements established by Federal, State or Local laws and regulations. Compliance with the reporting requirements imposed by the CAO shall not relieve MHD of any other reporting requirements imposed by Federal, State or Local laws and regulations.

58. EPA may, entirely within its discretion, extend any deadlines under this Section whenever it deems such extensions are appropriate.

XI. REPORTING OF RELEASES

59. Upon the occurrence of any event requiring reporting by MHD pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, and/or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, MHD shall orally notify the EPA Project Coordinator and MA DEP within twenty four (24) hours of the onset of such event. Should the EPA Project Coordinator be unavailable, MHD shall notify the Emergency Response Unit, Region I, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

60. Within twenty four (24) hours of the onset of identifying a threat which may pose an imminent and substantial endangerment to human health or the environment, MHD shall orally notify EPA. Within ten (10) days of the onset of such threat,

MHD shall furnish to EPA's Waste Management Division a written report which includes a Work Plan, signed by its Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days of the conclusion of such a threat which may pose an imminent and substantial endangerment to human health or the environment, MHD shall submit a report to EPA's Waste Management Division setting forth all actions taken in response thereto.

61. During periods of field work resulting from a threat that may pose an imminent and substantial endangerment to human health or the environment, MHD shall provide EPA with updated reports on a monthly basis. The content of the reports shall be as set out in this Section, but can be modified with the consent of the appropriate EPA contact.

62. EPA may, entirely within its discretion, extend any deadlines under this Section whenever it deems such extensions are appropriate.

63. All reports shall include, but are not limited to the following:

A. a description of the actions taken to achieve compliance with the terms of this CAO;

B. a description of all tasks and actions conducted pursuant to this CAO completed during the past quarterly period, and all such actions and tasks that are scheduled for the next quarterly period; and

C. identification of any elements not completed as required and any problems or anticipated problems, including the scheduled completion date, the new anticipated completion date, the reason(s) for the delay and the actions taken to minimize the

delay.

XII. PROFESSIONAL SUPERVISORY REQUIREMENTS

64. All Work performed pursuant to remediation of a threat that may pose an imminent and substantial endangerment to human health or the environment, Compliance (as defined in Section VI) or a SEP shall be under the direction and supervision of a professional engineer, geologist, or environmental scientist with expertise in hazardous waste site investigations and remediation. However, MHD shall notify EPA's Waste Management Division in writing within seven (7) days after retaining such a professional(s), other than those currently hired by MHD to carry out the Work. This notification shall include the name, title, and qualifications of the professional(s) and of any contractors or subcontractors and their personnel to be used.

XIII. PROJECT COORDINATORS

65. Within seven (7) days of entry of this CAO, EPA and MHD shall designate their respective Project Coordinators, and shall so notify each other in writing. Both Project Coordinators shall be responsible for overseeing the implementation of this CAO. The EPA Project Coordinator will be EPA's representative with regard to the Facilities. Unless otherwise provided, all communications between MHD and EPA, all documents, reports, approvals and other correspondence concerning the activities performed shall be directed through the Project Coordinators. EPA and MHD each have the right to change their respective Project Coordinator. Such a change shall be accomplished by

notifying the other party in writing at least seven (7) days prior to the change, if possible, but in any event no later than two (2) business days after the change. The absence of an EPA project coordinator shall not be cause for the stoppage of Work.

66. The EPA Project Coordinator shall have the authority to halt any Work if, in his or her opinion, MHD's Work has caused a threat that may pose an imminent and substantial endangerment to human health or the environment. If the EPA Project Coordinator believes that the Work may pose an imminent and substantial threat to human health and the environment, or if the Work being done is not in accordance with the terms of this CAO, it shall orally notify MHD within forty eight (48) hours of the stoppage. Within seven (7) business days, EPA will provide MHD with a written justification for the Work stoppage.

XIV. EPA REVIEW AND APPROVAL PROCESS

67. After review of any plan, report or other item which is required to be submitted for EPA approval pursuant to this CAO as described in Section VI, (Compliance), Section VII, (Supplemental Environmental Projects), or in the event that MHD, DEP or EPA determines that a situation may pose an imminent and substantial endangerment to human health or the environment, the Director, shall in writing:

- A. approve, in whole or in part, the submission;
- B. approve the submission upon specified conditions;
- C. modify the submission to cure the deficiencies;
- D. disapprove, in whole or in part, the submission,

directing that MHD modify the submission;

E. disapprove, in whole or in part, the submission, notifying MHD of deficiencies and of the Director's decision that EPA will modify the submission; or

F. any combination of the above.

68. In the event of approval, approval upon conditions, or modification by the Director, pursuant to Paragraphs 67.A, 67.B, 67.C or 67.E, MHD shall, in accordance with the approved schedule, proceed to take any action required by the plan, report, or other item, as approved or modified by the Director subject only to MHD's right to invoke the Dispute Resolution procedures set forth in Section XXV (Dispute Resolution) with respect to the modifications or conditions made by the Director. In the event that the Director modifies the submission to cure the deficiencies pursuant to Paragraphs 67.C or 67.E and the submission has a material defect as determined by EPA, EPA retains its right to seek stipulated penalties, as provided in Section XXV (Dispute Resolution).

69. Upon receipt of a written notice of disapproval pursuant to Paragraph 67.D, MHD shall, within fourteen (14) days or such other time as specified by the Director in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any Stipulated Penalties applicable to the submission, as provided in Section XXIV (Stipulated Penalties), shall accrue during the fourteen (14) day period or otherwise specified period, but shall not be payable unless the

resubmission is disapproved or modified due to a material defect, as determined by EPA, in accordance with Paragraph 67.

70. Notwithstanding the receipt of a written notice of disapproval pursuant to Paragraph 67.D or 67.E, MHD shall proceed, at the direction of the Director, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve MHD of any liability for Stipulated Penalties.

71. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by the Director, the Director may again require MHD to correct the deficiencies, in accordance with the preceding Paragraphs. The Director also retains the right to amend or develop the plan, report or other item. MHD shall implement any such plan, report, or item as amended or developed by the Director, subject only to their right to invoke the procedures set forth in Section XXV (Dispute Resolution).

72. If upon resubmission, a plan, report, or item is disapproved or modified by the Director due to a material defect, MHD shall be deemed to have failed to submit such plan, report, or item timely and adequately unless MHD invokes the Dispute Resolution procedures set forth in Section XXV (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XXV (Dispute Resolution) and Section XXIV (Stipulated Penalties), shall govern the implementation of the Work and accrual and payment of any

stipulated penalties.

73. All plans, reports, and other items required to be submitted to the Director pursuant to this Section shall, upon approval or modification by the Director, be enforceable pursuant to this Section. In the event the Director approves or modifies a portion of a plan, report, or other item required to be submitted to EPA pursuant to this Section, the approved or modified portion shall be enforceable under this CAO.

XV. PUBLIC INVOLVEMENT

74. Nothing in this CAO shall preclude the organization of the public into groups for the purpose of providing meaningful comment and disseminating publicly available information to the general public with respect to the requirements of this CAO.

75. The public and its organizations may review and provide comment on information to the extent provided for under RCRA, MGL 21C and 21E, and other applicable laws.

76. Nothing in this CAO shall preclude MHD from establishing arrangements with the public for site access for inspections.

77. MHD may hold meetings with community members for the purpose of updating citizens on remediation activities, SEPs and other issues that may arise. MHD shall make all reasonable efforts to ensure that translators or other citizens familiar with the concerns of the community are present at hearings or public meetings.

XVI. RETENTION AND AVAILABILITY OF INFORMATION

78. MHD shall preserve and make available to EPA all records, documents and information maintained in any form by them or by its contractors, subcontractors, or anyone else acting on its behalf, which have been generated concerning implementation of this CAO. Such records shall be preserved and maintained at a central repository for this purpose. These records shall be so maintained for a minimum of six (6) years after termination of this CAO. "Records" include, but are not limited to: sampling, analyses, chain-of-custody records, manifests, trucking logs, receipts, reports, computer disks, correspondence, and any other documents and draft documents produced pursuant to or in furtherance of the provisions of this CAO.

79. After the record retention period referred to in Paragraph 78 has run, MHD shall notify EPA's Waste Management Division not less than sixty (60) days prior to the destruction of any of the documents. Upon request by EPA, MHD shall provide EPA's Waste Management Division with any and all documents upon request.

80. Upon request by EPA, MHD and/or their contractors shall promptly make available all records and information relating to the required activities. MHD may assert a confidentiality claim, if appropriate, covering all or part of any information submitted to EPA pursuant to this CAO. Such an assertion shall be made pursuant to 40 C.F.R. § 2.203(b), and shall be adequately substantiated when made. Information determined to be confiden-

tial by the Director shall be afforded the protection specified at 40 C.F.R. Part 2, Subpart B. If no such claim accompanies any information submitted to EPA's Waste Management Division, such information may be made available to the public without further notice to MHD. MHD shall not assert a confidentiality claim regarding any hydrogeological or analytical data generated pursuant to this CAO.

XVII. INCORPORATION AND ENFORCEABILITY OF DOCUMENTS

81. All attachments to this CAO shall be deemed incorporated into, and made an enforceable part of, this CAO. However, those attachments marked "Appendix" are not incorporated into this CAO.

XVIII. SEVERABILITY

82. The provisions of this CAO shall be severable. Should any provisions be declared to be unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in effect.

XIX. CERTIFICATION

83. All deliverables associated with SEPs, Compliance (as defined in Section VI) and major deliverables associated with remediating threats that may pose an imminent and substantial endangerment to human health or the environment shall be signed by MHD's Chief Engineer and shall include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel

properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

XX. SUBMITTALS AND NOTICES

84. Documents, including reports, notices, approvals, disapprovals and other items to be submitted pursuant to this CAO, shall be sent to the following addresses, or any other address that MHD or EPA, respectively, hereafter designates in writing:

A. Two (2) copies of all documents submitted to EPA's Waste Management Division should be sent to:

U.S. Environmental Protection Agency
John F. Kennedy Federal Building
Boston, Massachusetts 02203
Attn: Patricia Hickey (HRW)

B. Two (2) copies of all documents submitted to MHD's Chief Engineer and Legal Counsel should be sent to:

Massachusetts Highway Department
10 Park Plaza
Boston, Massachusetts 02116
Attn: Chief Engineer (mail code)
Chief Counsel (mail code)

C. One (1) copy of all documents submitted to EPA's legal counsel at:

U.S. Environmental Protection Agency
John F. Kennedy Federal Building
Boston, Massachusetts 02203
Attn: Amelia Katzen (RCE), Legal Counsel

XXI. ACCESS

85. EPA and/or any EPA authorized representative shall have

the authority to enter and freely move about all property at the Facilities during regular business hours for the purposes of, inter alia: interviewing Facility personnel and contractors; inspecting records, operating logs, and contracts related to the Facilities; reviewing MHD's progress in carrying out the terms of this CAO; conducting such tests as EPA and/or its Project Coordinator deem necessary using a camera, sound recording, or other documentary type equipment; and verifying the reports and data submitted by MHD to EPA associated with SEPs, Compliance (as defined in Section VI) and remediation activities resulting from acts that may pose an imminent and substantial threat to human health and the environment. MHD shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to Work undertaken pursuant to this CAO.

86. To the extent that the Work required under this CAO requires access to or use of property presently owned or under the control of persons other than MHD, MHD shall use its best efforts to obtain whatever access agreements, easements, rights-of-way, or other rights of entry that are necessary to carry out the Work. Such access agreements shall provide for reasonable access by EPA and/or any authorized EPA representative to the property for the purpose of observing MHD's activities undertaken pursuant to this CAO.

87. "Best efforts" shall include the offering of reasonable compensation for the requisite access agreements, easements,

rights-of-way, or other rights of entry provided funds for such compensation are available to MHD pursuant to Section XXIII (Payment by MHD).

88. In the event that any access agreement required in paragraph 86 above, cannot be obtained at least thirty (30) days prior to the date that access is necessary, MHD shall immediately notify EPA's Waste Management Division of its failure to obtain such access agreement.

89. Nothing in this CAO shall be construed to limit EPA's authority to exercise its rights pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927, CERCLA Section 104, 42 U.S.C. § 6904, or to affect any right of entry possessed by EPA pursuant to any applicable laws, regulations, or permits.

90. MHD shall take appropriate actions to ensure that all SEPs, Work associated with actions that may pose an imminent and substantial endangerment to human health or the environment, Compliance (as defined in Section VI) and other Work undertaken pursuant to this CAO shall not be impeded or impaired by the transfer of title or transfer of any other interest in real property relating to any of the Facilities or any of the structures thereon. Such actions shall include, but not be limited to ensuring that EPA and MHD have the rights to access to and over such property which is the subject of this CAO. MHD shall use "best efforts" to ensure that the owners or lessees of any such property shall notify EPA and MHD by certified mail, at least sixty (60) days prior to any conveyance of any interest in

the property, or the property owner's or lessee's intent to transfer any interest in the property and of the provisions made for the continued completion of SEPs, Compliance (as defined in Section VI), Work associated with threats that may pose an imminent and substantial endangerment to human health or the environment and other Work provided for pursuant to this CAO that is still being implemented.

XXII. CIVIL PENALTY

91. Within one hundred eighty (180) days after entry of this CAO, MHD shall pay a civil penalty of \$100,000 to the United States in settlement of the claims set forth in the Complaint, accruing from date of entry pursuant to Section XXIII (Payment by MHD). The check shall be made payable to the "Treasurer of the United States of America," and be mailed to:

EPA Region I
P.O. Box 360197M
Pittsburgh, PA 15215

XXIII. PAYMENT BY MHD

92. This Section shall govern all instances of payment by MHD pursuant to this CAO, including but not limited to the payment of penalties pursuant to Section XXII (Civil Penalty), Section XXIV (Stipulated Penalties), Section XXI (Access), and the payment of accrued interest pursuant to this and any other Section of this CAO.

93. The payment of obligations imposed by this CAO may require MHD to seek appropriation to fund its payments arising from this CAO. No provision in this CAO will be interpreted as

or constitute a commitment that MHD obligate or pay funds in contravention of MGL c. 29.

94. MHD shall make payment of the \$100,000 civil penalty within one hundred eighty (180) days from the date of entry of this CAO. In the event that payment is not made within one hundred eighty (180) days of entry, MHD's senior financial officer shall certify in writing that the sum cannot be paid within one hundred and eighty (180) days and explain the procedures he/she will employ to secure payment. In addition, MHD shall pay \$500 per day for each day of non compliance and interest on the unpaid balance at the Treasury Rate until the penalty is paid in full.

95. MHD shall make payment within one hundred and eighty (180) days from the date of demand for Stipulated Penalties. In the event that payment is not made within one hundred and eighty (180) days of the request, MHD shall pay interest on the unpaid balance at twelve percent (12%) per annum until the penalty is paid in full beginning sixty (60) days after it receives the request.

96. MHD shall pay the owner of property where access is required just compensation within sixty (60) days from the date MHD acquires any interest in property necessary to satisfy the terms of the CAO in accordance with MHD's obligations under MGL c. 79. In the event that access is not obtained, MHD shall reimburse EPA for costs associated with obtaining access.

97. After the first thirty (30) days that any amount of a

penalty payment is not made in accordance with the above paragraphs, MHD shall be assessed a late payment handling charge of \$15.00 for each and every subsequent thirty (30) day period for which any monies are overdue. If MHD elects to resolve a dispute regarding a demand for payment made hereunder, the accrual of interest shall be stayed until MHD's receipt of a final decision resolving the dispute.

XXIV. STIPULATED PENALTIES

98. Unless otherwise provided in this Section, MHD shall pay the following stipulated penalties for violations of the following requirements or activities: SEP Proposals; SEP Work Plans; a Compliance Plan, pursuant to Section VI; a final Compliance report, pursuant to Section VI, for each Facility in the manner or within the time required by the terms of this CAO; and Work Plans associated with remediating imminent and substantial threats to human health or the environment.

99. MHD shall pay EPA the following stipulated penalties for failing to commence and implement Work pursuant to each approved SEP Work Plans, Compliance plan (as defined in Section VI); and Work associated with remediating imminent and substantial endangerments to human health or the environment.

100. Any failure by MHD to submit or resubmit a SEP proposal or commence and complete an approved SEP in a timely manner pursuant to Section VII, (SEPs) shall constitute a violation of the CAO for which MHD may be subject to Stipulated Penalties.

101. For untimely submittals, Stipulated Penalties shall

begin to accrue on the day after the submittal or resubmittal of MHD's SEP proposal is due and shall terminate on the date MHD submits its original SEP proposal, resubmits a proposal in accordance with EPA's written comments or submits a proposal for a alternate SEP, or pays a civil penalty in accordance with Section XXII (Civil Penalty).

102. Stipulated penalties for failure to commence and complete an approved SEP shall begin to accrue on the day after MHD is to commence any work or activity on the SEP and shall continue to accrue until the day that MHD commences such work or activity on the SEP or MHD pays a civil penalty in accordance with Section XXII (Civil Penalty).

103. Any failure by MHD to comply with the schedule outlined in Section VI (Compliance) shall constitute a violation of the CAO for which MHD may be subject to Stipulated Penalties. For untimely submittals, stipulated penalties shall begin to accrue on the day after the Work is to be completed.

STIPULATED PENALTIES SCHEDULE

<u>Period of Noncompliance</u>	<u>Penalty Per Day Per Noncompliance</u>
1st through 10th day	\$1,000 per day
11th through 21st day	\$2,000 per day
22nd through 60th day	\$3,000 per day
61st day and each day thereafter	\$7,500 per day

104. For each day MHD is late in submitting civil penalties pursuant to Paragraph 91, MHD shall pay a stipulated penalty of \$500 per day.

105. All Stipulated Penalties as provided by Paragraph 98,

above, except SEPs, shall begin to accrue on the date that the complete performance is due or a noncompliance occurs, whichever is earlier, and shall continue to accrue through the day such noncompliance is corrected. MHD shall pay any such penalty upon receipt of demand from EPA unless MHD invokes Dispute Resolution. Payment shall be due and owing one hundred and eighty (180) days after request from EPA for payment. Nothing herein shall prevent the simultaneous accrual of penalties for separate violations of this CAO. Interest and handling charges shall begin to accrue and shall be due and payable in accordance with Section XXIII (Payment by MHD).

106. All Stipulated Penalty payment drafts shall reference the Docket number and the settlement amount and be paid by check made payable to the "Treasurer of the United States of America," and be mailed to:

EPA Region I
P.O. Box 360197M
Pittsburgh, PA 15215

and shall provide copies of the check to:

Regional Hearing Clerk (RCA)
U.S. Environmental Protection Agency
John F. Kennedy Federal Building
Boston, MA 02203-2211

and

Patricia Hickey
RCRA Support Section (HRW)
U.S. Environmental Protection Agency
John F. Kennedy Federal Building
Boston, MA 02203-2211

107. A copy of the check and transmittal letter shall be sent to EPA's Office of Regional Counsel at the address provided

in Paragraph 84. The transmittal document shall identify the docket number, each violated requirement forming the basis for the stipulated penalty(ies), the date(s) of noncompliance for which payment is being made, the amount of stipulated penalties being paid and, if any, the amount of interest, handling charges, and late payment penalty charges being paid.

108. The provision for payment of Stipulated Penalties set forth in this Section does not preclude the EPA from also pursuing any other injunctive remedy or sanction which may be available by reason of MHD's failure to comply with any requirement of this CAO, including contempt sanctions.

XXV. DISPUTE RESOLUTION

109. EPA and MHD shall use their best efforts informally and in good faith to resolve expeditiously all disputes or differences of opinion relating to the conduct of all activities under this CAO which relate to SEPs, Compliance (as defined in Section VI), and Work related to acts that may imminent and substantial endangerment to human health or the environment. If, in the opinion of either party, there is a dispute concerning the interpretation of this CAO, or any document referenced herein or attached hereto, that party shall send written notice to the other party outlining the nature of the dispute and requesting negotiations to resolve the dispute. If the parties cannot resolve a dispute with respect to any aspect of this CAO informally, including documents referred to herein and schedules concerning such documents, then the interpretation advanced by

EPA shall be considered binding, unless MHD invokes and succeeds in Dispute Resolution under this Section. The dispute resolution mechanism described herein pertains to all disputes arising under any and all provisions of this CAO. If MHD objects to any or all of an EPA approval with modification, they must invoke their rights under this Section or its rights to contest such modification are waived.

110. If, within fourteen (14) days of receipt of notice of a dispute, the parties are unable to informally resolve their differences in accordance with Paragraph 109, MHD shall within five (5) days thereafter, present a written statement of position as to such dispute to EPA. The written statement of position shall set forth the specific points of dispute, the position of MHD and the bases therefore, and any actions which MHD consider necessary to resolve the dispute.

A. If the Director concurs with MHD's position as set forth in MHD's written statement of position, the Director shall provide written notice of such concurrence to MHD.

B. If the Director does not concur with MHD's statement of position, EPA shall informally notify MHD and the parties and their representatives shall meet face to face within ten (10) days of such notice in a good faith effort to resolve their differences. If the parties are still unable to resolve their differences, MHD shall then have an additional fourteen (14) days after such meeting(s) to provide additional information for the Director's consideration.

C. If after considering MHD's statement of position and any additional information and submissions, the Director still does not concur with MHD's position, the Director shall notify MHD in writing. In any dispute, MHD shall have the burden of proving that EPA's decision should be overturned. The parties recognize and agree that the Division Director's review of any action, inaction or decision taken or made by EPA with regard to this CAO is limited to a determination of whether EPA's action or position is arbitrary and capricious.

111. The existence of a dispute as described herein, and EPA's consideration of such matters as are placed into dispute, shall not excuse, toll or suspend any other compliance obligation or deadline required pursuant to this CAO, apart from the matter(s) in dispute, and shall not toll the accrual of stipulated penalties, during the pendency of the Dispute Resolution process for matters that are not the subject of Dispute Resolution.

112. During the pendency of the Dispute Resolution process, the accrual of Stipulated Penalties shall be tolled for the matters that are the subject of the Dispute Resolution.

113. Upon the resolution of any dispute, whether informally or using the procedures described in this Section, MHD shall within five (5) days incorporate the resolution into the amended Work Plan or procedure and proceed with the Work according to the amended Work Plan or procedures and/or as appropriate, pay any stipulated penalty that is due and owing.

XXVI. COMPLIANCE WITH OTHER LAWS

114. All Work undertaken by MHD pursuant to this CAO shall be performed in compliance with all applicable Federal, State and local laws and regulations, including all Occupational Safety and Health Act and Department of Transportation regulations, subject to MHD's right to challenge the validity or application of such laws and regulations in accordance with applicable law. MHD shall file a timely and complete application for all State and local permits which are necessary for the performance of the Work. This CAO is neither a permit nor a modification of a permit.

XXVII. FORCE MAJEURE

115. A force majeure event is defined as any event caused by circumstances beyond the control of MHD, or any entity that is subject to MHD's control, including a contractor, subcontractor, or consultant, which could not have been foreseen or prevented, and which delays or prevents performance of an obligation under this CAO as it relates to SEPs, Compliance (as defined in Section VI) or acts that may pose imminent and substantial endangerments to human health or the environment. Such events do not include increased costs of complying with this CAO or changed economic circumstances.

116. When circumstances are occurring or have occurred that can reasonably be anticipated to delay or prevent the performance of an obligation under this CAO, or under any plan developed hereunder within the time allowed, MHD shall notify EPA's Waste

Management Division and MA DEP by telephone within two (2) business days after the occurrence of such circumstances. In addition, within fourteen (14) days after the occurrence of such circumstances, MHD shall give EPA's Waste Management Division and MA DEP written notice of the delay. Such notice shall include an estimate of the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. In addition, the written notice shall contain a statement as to whether MHD is claiming that any delay was caused by a "force majeure" event and the bases for any such claim. MHD shall adopt all reasonable measures to avoid or minimize any such delay. Failure to comply with the notice provisions of this Section shall constitute a waiver of MHD's right to assert that a force majeure event occurred. Notification of any delay, in and of itself, shall not extend the time allowed for meeting any requirement or excuse the delay or payment of stipulated penalties.

117. If EPA agrees that a delay in required performance is attributable to a "force majeure" event, the time for performance of that requirement may be extended by written agreement of EPA for a period not greater than the delay resulting from such circumstances. Such an extension does not alter the schedule for performance or completion of other tasks required under this CAO, unless otherwise agreed. In the event that EPA and MHD cannot agree as to whether a delay was caused by a force majeure event,

or the length of the extension of time, the dispute shall be resolved in accordance with the Dispute Resolution provisions. MHD shall have the burden of demonstrating that the event was a "force majeure" event, that the duration of the delay caused by such event is or was warranted under the circumstances, and that, as a result of the delay, a particular extension of time is appropriate.

XXVIII. TRANSFER OF REAL PROPERTY

118. MHD may enter into an agreement to sell or otherwise transfer real property comprising a Facility once MHD has completed all SEPS, assured compliance with RCRA as outlined in Section VI, (Compliance), and completed remedial actions and operation and maintenance arising from an event that may pose an imminent and substantial endangerment to human health or the environment for such Facilities. MHD shall give EPA and DEP sixty (60) days written notice prior to initiating such transfer.

119. MHD may sell or transfer real property comprising the Facilities referenced in Paragraph 118 above, provided:

A. MHD ensures that the sale or transfer of such a Facility does not effect EPA's right of access contained in Section XXI (Access) in order to effectuate the purposes of this CAO; and

B. MHD shall give EPA at least sixty (60) days written notice prior to initiating such sale or transfer, together with a summary of the terms of the sale or transfer which shall include: the name of the transferee; the type of transfer document, if

applicable, the duration of the transfer; the description and location of the Facility to be sold or transferred; and, the provisions that ensure EPA and MHD's continued access, where necessary, to the particular Facility. MHD shall provide to EPA a signed copy of any final agreement of such sale and transfer.

XXIX. FACILITY CLOSURES

120. Facility closures will not constitute a "force majeure" event, nor will it automatically constitute good cause for extensions, unless otherwise agreed to by EPA.

XXX. RETENTION OF RIGHTS

121. Nothing contained in this CAO shall be construed to prevent EPA or the United States from seeking legal or equitable relief to enforce RCRA or the terms of this CAO, or from taking other actions they deem necessary or appropriate to protect human health or the environment. These actions include, but are not limited to, seeking further enforcement in Federal District Court pursuant to applicable provisions of Sections 3005, 3008(a), 3008(h)(2), and 7003 of RCRA, 42 U.S.C. §§ 6925, 6928(a), 6928(h)(2), and 6973 if MHD fails to comply with the requirements of this CAO within the time frames specified. EPA may seek penalties of up to \$25,000 per violation for each day MHD fails to comply with RCRA.

122. EPA expressly reserves the right: (a) to expend and to recover funds under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9401 et seq.; (b) to bring further "imminent and substantial

endangerment" actions under RCRA Section 7003 and/or CERCLA Section 106, 42 U.S.C. §§ 6973 and 9606; (c) to address releases other than those identified in this CAO; (d) to bring actions as appropriate under any of the other statutory or regulatory authorities administered by EPA; (e) correct violations alleged in the Complaint that gave rise to this CAO; and, (f) satisfy the SEP terms and conditions.

123. EPA reserves the right to halt Work and/or perform any portion of such Work consented to herein or response actions as it deems necessary in response to situations that may pose an imminent and substantial threat to human health or the environment. EPA reserves the right to seek reimbursement from MHD for all costs incurred by the United States related to halting or performing any Work at the Facilities, subject to the Dispute Resolution procedures under Section XXV (Dispute Resolution). Notwithstanding compliance with the terms of this CAO, MHD is not released from liability that may arise for costs of any actions taken by EPA or the United States to enforce the terms this CAO.

124. This CAO is not a covenant not to sue, release, waiver or limitation of any rights, remedies, powers and/or authorities, civil or criminal, which EPA or the United States has under RCRA, CERCLA, CWA, or any other statutory, regulatory or common law enforcement authority.

125. This CAO is not a release from any claim, cause of action or demand in law or equity against any person, firm,

partnership, or corporation not a signatory to this CAO for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facilities.

126. MHD reserves its rights and defenses available to it in any subsequent enforcement action commenced by EPA.

XXXI. SATISFACTION

127. Entry of this CAO shall constitute full settlement of the claims expressly set forth in the Complaint. This CAO in no way relieves MHD (or its employees) of any criminal liability.

XXXII. MODIFICATION

128. Except as provided herein there shall be no material modification of this CAO without written agreement of EPA and MHD. EPA and MHD may make minor modifications to this CAO with the agreement of EPA and MHD.

XXXIII. RETENTION OF JURISDICTION

129. EPA shall retain jurisdiction over this CAO for purposes of ensuring compliance with its terms and conditions.

130. EPA and MHD each retain the right to seek to enforce the terms of this CAO and take any action authorized by federal or state law not inconsistent with the terms of this CAO.

XXXIV. COSTS

131. Each party to this action shall bear its own attorney's fees.

XXXV. TERMINATION

132. When MHD determines that it has completed a SEP, arrived at Compliance (as defined in Section VI) or remediated a Facility so as to prevent a release or a threat of a release that poses an imminent and substantial endangerment to human health and the environment, it shall so advise EPA and MA DEP in writing, and shall request from EPA, in consultation with MA DEP, certification that the SEP, Compliance (as defined in Section VI) and remediation associated with acts that may pose an imminent and substantial endangerment to human health or the environment have been completed with respect to a particular Facility. MHD shall schedule and conduct a precertification inspection to be attended by MHD and EPA. MA DEP may participate in the precertification inspection, if it so desires. Within thirty (30) days of such inspection, MHD will submit a project closeout report signed by MHD's Chief Engineer certifying that the SEP, Compliance (as defined in Section VI) and remediation involving acts that may pose an imminent and substantial endangerment to human health and the environment have been completed. Within ninety (90) days of receipt of the closeout report, EPA, in consultation with MA DEP, shall advise MHD in writing that:

A. EPA certifies that the SEP, Compliance (as defined in Section VI) and remediation have been completed at the Facilities in accordance with this CAO; or,

B. EPA denies MHD's request for certification at the Facility, stating the basis of the denial.

133. If EPA, in consultation with MA DEP, denies MHD's request for certification that such Work has been completed, MHD may invoke Dispute Resolution to review EPA's determination on certification and/or the need for additional Work. If EPA fails to respond within ninety (90) days of MHD's request for certification, such failure shall be treated as EPA denying certification subject to Dispute Resolution. If EPA's denial of a Facility certification is upheld in Dispute Resolution, EPA may seek to require additional Work to be performed by MHD in order to achieve the objectives of this CAO.

134. Following EPA certification of all of the SEPs, Compliance (as defined in Section VI), and remediation associated with acts that may pose an imminent and substantial endangerment to human health or the environment, MHD may propose in writing the termination of this CAO. The termination proposal must be based on MHD's showing that its obligations under this CAO have been satisfied. The obligations of this CAO shall be deemed satisfied and terminated upon receipt by MHD of written notice from EPA, in consultation with MA DEP, that all of the terms of the CAO have been satisfied. EPA shall have one (1) year from the receipt of a written MHD request for such notice to grant or deny the request for termination of the CAO. If MHD's request is denied, EPA will, within one (1) year, provide a written explanation of the basis of its denial.

135. In no event shall this CAO terminate prior to MHD's completion of the SEPs, arriving at Compliance (as defined in

Section VI), or remediating all Facilities that may pose an imminent and substantial endangerment to human health or the environment as required by this CAO.

XXXVI. FINAL JUDGEMENT

136. The CAO shall constitute a final judgment in this action. MHD does not waive its right to judicial review.

For Complainant:

Deborah

Date: 9/29/94

Deborah Brown
Associate Regional Counsel
U.S. Environmental Protection Agency
Region I

Frank Clavattier

Date: 9/30/94

Director, Waste Management Division
U.S. Environmental Protection Agency
Region I

THE PARTIES AGREE AND CONSENT HERETO:

The above Consent Agreement and Order is approved and issued in settlement of this action. Respondent is hereby ordered to comply with the terms of this Consent Agreement and Order.

BY:



John P. DeVillars
Regional Administrator
Region I
United States Environmental
Protection Agency


Date:

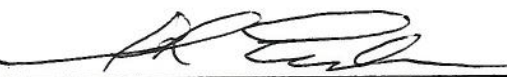
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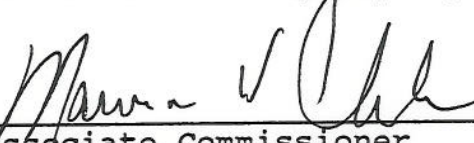
FOR THE MASSACHUSETTS HIGHWAY DEPARTMENT

BY:  Date: 9/30/94
Commissioner
Massachusetts Highway Department

BY:  Date: 9/30/94
Associate Commissioner
Massachusetts Highway Department

BY:  Date: 9/30/94
Associate Commissioner
Massachusetts Highway Department

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